IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.269 OF 2004

Maharashtra State Road Transport
Corporation ...Appellant

Vs.

Jiyauddin Makbul Shikalgar ...Respondent

Mr.G.S.Hegde with Shri C.M.Lokesh for the Appellant.

CORAM: A.S.OKA, J.

DATED: AUGUST 24, 2004.

ORAL JUDGMENT :

1. Heard the Counsel appearing for the parties. The challenge in the First Appeal is to the Judgment and Award dated 18th November 2003 passed by the learned Member of Motor Accident Claim Tribunal, Satara.

2. The Respondent is the claimant. The accident in question has taken place on 25th June 1978 when the Respondent was travelling in a bus of the Appellant Maharashtra State Road Transport Corporation along with his parents. The case of the Respondent is that he suffered a fracture of skull in the said accident which had far reaching effects. A case is made out that as a result of injuries sustained in the accident, the Respondent is suffering from frequent attacks of epilepsy and has become mentally retarded. The claim Petition was

filed on 30th December 1999. The Tribunal has awarded compensation of Rs.3,02,000/- with interest @ 9% from the date of filing the Claim Petition inclusive of the amount paid earlier on account of no fault liability.

3. The learned Counsel for the Appellant submitted that the Claim Application has been filed 21 years after the date of accident. He submitted that there is no documentary evidence to show that the Respondent suffered any injury in the accident. He submitted that the Application was barred by limitation. He submitted that the compensation awarded is excessive.

4. I have considered the submissions made by the Counsel appearing for the Appellant. I have also perused the copies of notes of evidence, depositions and other documents placed on record of the Tribunal. In so far as period of limitation is concerned, Section 166 of the Motor Vehicles Act, 1988 as originally enacted provided for a period of limitation. However, Sub Section 3 which provided for period of limitation was deleted by amendment which was brought into force from 14th November 1994. Therefore, there is no prescribed period of limitation under the said Act of 1988 for filing a Claim Petition. It is pertinent to note that the age of the Respondent at the time of accident was 3 to 4 months. After he attained majority, Claim Petition is filed in December 1999. Therefore, the Claim Petition cannot be

rejected on the ground of bar of limitation.

5. This is not a case where there is no evidence to show that the Respondent suffered injury in the accident. The Respondent examined the Conductor of the bus which was involved in the accident. The Conductor admitted that the mother of the Respondent was in the bus alongwith a boy who was 2 to 4 months old. The Conductor deposed that the accident took place on 26th June 1978 and some of the injured passengers were taken to Sasoon Hospital at Pune. The version of the Conductor regarding injuries suffered by the Respondent in the accident is not seriously challenged in the cross examination. Apart from the deposition of the Conductor, the Respondent has produced documents from the record of Sasoon General Hospital, Pune which show that on 26th June 1978 the Respondent was admitted in the hospital. The case papers of the Sasoon Hospital disclose that there was a big haematoma on the left side of skull of the Respondent and there was a fracture of skull. The Conductor has stated on oath that the passengers who were injured in the accident which occurred on 26th June 1978 were admitted in the Sasoon Hospital on the same date i.e. 26th June 1978. The Respondent was admitted in the Sasoon Hospital on the same date when the fracture of skull has been diagnosed. Thus, the evidence of the Bus Conductor is corroborated by the record of the Sasoon Hospital, Pune. The father of the Respondent has also stated that the Respondent suffered

injuries when the State Transport Bus in which he was travelling met with an accident. This part of his evidence has not been challenged in the cross examination.

6. As far as the negligence is concerned, the Respondent has not explained the manner in which the accident took place in the year 1978. Though the Driver of the bus may not be in the employment of the Appellant-Corporation, there is nothing on record to show that any effort was made by the Appellant to secure the presence of the Driver as a witness. It is not the case of the Appellant that they tried to serve the witness summons on the Driver or that the driver did not turn up or that the address of the Driver was not available. Therefore, this is a fit case where adverse inference has to be drawn against the Appellant for not examining the Driver. In the circumstances, the case made out by the Respondent that the accident occurred due to the negligence of the Driver will have to be accepted.

7. Apart from documentary evidence in the form of case papers of Sasoon Hospital, there is other medical evidence on record. The report of Radiologist Dr.G.K.Thakker dated 24th October 1985 discloses that there was old fracture of skull suffered by the Respondent. There is a certificate issued by the Head Mistress of Municipal School of Karad Municipal Council dated 4th September 1985 recording that the Respondent is not in a position to respond to the questions

asked by the teacher and he suffers frequent attacks of epilepsy. There is a certificate of Dr. M. D. Mohire, Neurologist dated 5th June, 1990 which also records that the Respondent is suffering from epilepsy. It is also recorded in the certificate that the Respondent suffered head injury in the accident of S.T.Bus. The respondent's mother has also been examined and she had pointed out the effects of the injuries suffered in accident on the Respondent. Moreover, Dr.Ashok Chitale, M.D.(Medicine) has been examined as a witness who is treating the Respondent for last 10 to 12 years. He has stated on oath that the Respondent is suffering from epilepsy and he is also mentally retarded. He has also stated that possibility cannot be ruled out that one Respondent suffered from epilepsy and right hemiparesis due to fracture of left temporal bone. He has fixed permanent disability to the extent of 60%. There is hardly any challenge to the version of Dr. Chitale in his cross examination. Considering the medical evidence on record and assessment of permanent disability compensation of Rs.3,02,000/- has been awarded by the Tribunal. The Tribunal has awarded compensation towards medical expenses of Rs.50,000/-, a sum of Rs.60,000/- has been awarded towards loss of amenities of life due to permanent disability. Based on permanent disability of 60%, the Tribunal has estimated the loss of earning Rs.1,35,000 by taking income Rs.9,000/- per year and by applying multiplier of 15 years. Considering the injuries suffered by the Respondent and the consequences

of the injury, the compensation which is awarded by the Tribunal is just and fair. At the age of 3 to 4 months, the Respondent suffered skull fracture as a result of which he has become mentally retarded and is suffering from the attacks of epilepsy. Hence, no interference is required with the impugned Judgment and Award. First Appeal is dismissed with no order as to costs.

Judge.